

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Department of Hawaiian Home Lands  
Request for Guidance Regarding Sandwich  
Isles, Inc.'s Exclusive License Pursuant to  
Section 253(a) of the Communications Act

WC Docket No. 10-90

CC Docket No. 96-45

REPLY OF WAIMANA ENTERPRISES INC.

**I. INTRODUCTION**

This Reply is submitted by Waimana Enterprises Inc. ("WEI") pursuant to the Federal Communications Commission's ("FCC") Public Notice dated February 6, 2017 requesting comment on the Hawaii Department of Hawaiian Home Lands' (DHHL) "request for guidance" regarding the License that DHHL negotiated and signed dated May 9, 1995, with DHHL as Licensor and WEI as Licensee. WEI partially assigned certain responsibilities under the License to Sandwich Isles Communications Inc. ("SIC"). The License is hereinafter referred to as the "License." After it has existed and been performed for the past 20 years (and DHHL has, during that extended time period, enjoyed the many benefits that it negotiated for itself and its trust-beneficiaries) DHHL has allegedly sought "guidance" on whether the License violates Section 253(a) of the Communications Act, 47 U.S.C. § 253(a).

The License has been in existence for over twenty (20) years. During that entire period, DHHL has accepted the benefits of the License without objection and without asking anyone for "guidance." Because of the License, each and all of DHHL's homesteaders in SIC's study area are able to receive modern telecommunications service regardless of how remote their

residence.<sup>1</sup> As a matter of federal and state law, every homesteader on DHHL land is a beneficiary of the Hawaiian Home Lands Trust. WEI and SIC are also Beneficiary-owned and exist to provide these important services to all of the homesteaders on the Hawaiian Home Lands (“HHL”) within SIC’s study area.

In the 1990’s, while negotiating the License, DHHL extracted numerous commitments and benefits for itself as well as for its homesteaders within the SIC study area. WEI undertakes numerous burdens in the License and makes numerous commitments (all of which have been kept). In exchange, WEI receives the right to certain “rights of way” on the HHL: lands owned, controlled and administered by DHHL.

Both DHHL and the FCC know quite well that the License does not exclude competition. To the contrary, the State of Hawaii Public Utilities Commission has certified other carriers as Eligible Telecommunications Carriers (“ETC”) to provide service to the HHL. FCC and USAC have paid approximately \$200 million dollars in high cost Universal Service Funds (“USF”) to those other certified ETCs for telecommunications services provided to SIC’s study area. WEI has never received any request from any telecommunications carrier to use SIC’s lines that are installed pursuant to the License with the DHHL. If any competitor sought to use SIC’s lines that would likely be a possibility; but it’s speculative at this point since no one has ever even asked; perhaps because there has never been any interest from any telecommunications company in serving all of the HHL.

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<sup>1</sup> Prior to the License, many homesteaders received no telecommunications service at all: because the local phone company found them not profitable; or in some cases the incumbent provided them with party-line service, the long forgotten relic from the 1940’s, where customers had to share the telephone line with their neighbors.

## **II. THE HAWAIIAN HOMES COMMISSION ACT AND TELECOMMUNICATION SERVICES**

In 1921, the United States Congress enacted the Hawaiian Homes Commission Act (the “Act”), setting aside approximately 200,000 acres of land (out of more than 4 million acres in the State of Hawaii) for homesteading by native Hawaiians. When Hawaii became a state, in 1959, the Act was made part of the Hawaii State Constitution. Section 101 of The Act states that its purposes include:

- (a) ... to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.
- (b)(1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;
- (b)(2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and assuring long-term tenancy to beneficiaries of this Act and their successors;
- (b)(3) Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity;
- (b)(4) Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible; and
- (b)(5) Providing financial support and technical assistance to native Hawaiian beneficiaries of this Act so that by pursuing strategies to enhance economic self-sufficiency and promote community-based development, the traditions, culture and quality of life of native Hawaiians shall be forever self-sustaining

Much like native American lands on the continental United States, that are under autonomous jurisdiction, the Act places the HHL directly under the autonomy of the Hawaiian

Homes Commission and DHHL. With virtually no exceptions, the Act excludes the Hawaii governor or other state agencies from any role in addressing the HHL:

[t]he powers and duties of the governor and the board of land and natural resources in respect to lands of the State, shall **not** extend to lands having the status of Hawaiian home lands, except as specifically provided in this title

Section 206, Hawaiian Homes Commission Act (emphasis added).

The Act expressly provides that the DHHL is empowered to grant licenses as DHHL controls all leasing and licensing of HHL:

(c)(1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section, for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians).

(2) The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.

**(3) Any license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities**

Hawaiian Homes Commission Act Section 207 (emphasis added).

The DHHL's correspondence with the FCC have repeatedly confirmed DHHL's power and authority to enter the exclusive license. In 1921 Congress enacted the Act and "established the Hawaiian home land trust" for the benefit of native Hawaiians:

The ACT gave **exclusive land use powers** to the Hawaiian Homes Commission (“HHC”) and exempted Hawaiian home lands (“HHL”) from the authority of the Governor, allowing the HHC to operate independently of many state and county regulations. Public utilities cannot service Hawaiian home lands without permission of the HHC and cannot exercise the power of eminent domain on HHL

The HHC issued an exclusive license to SIC on May 9, 1995 to build, construct, repair, maintain and operate a broad band telecommunications network on HHL.... HHC fully supports SIC’s request for expedited USF payments as well as any future SIC requests that will accelerate the installation of the state of the art telecommunications technology within HHL. The HHC views an affordable state of the art telecommunications system as a key part of our plan to making residential and economic opportunities available to our beneficiaries.

A true and exact copy of the Hawaiian Homes Commission’s May 14, 1997 letter to the Common Carrier Bureau of the Federal Communications Commission is attached hereto as Exhibit “A.” (emphasis added)

As has been the experience with native peoples around the world, the lands that were designated HHL, were not the most desirable lands in the State. The HHL are in many cases very remote. They are comprised of approximately 70 parcels which are not contiguous; and they are spread over six different islands. In the 1990’s when DHHL was exercising its authority under Hawaii State and Federal law, to negotiate a right of way with SIC over DHHL’s land, **the HHL in the SIC study area had no telecommunication service at all**. The incumbent phone company was not interested in providing modern service to most of the Home Lands because the Home Lands were so distant and sparsely populated that there was no profit in it. DHHL, in the exercise of the powers given to it by the U.S. Congress and the Hawaii State Constitution exercised its authority over the HHL to negotiate a good deal for itself and its beneficiaries, in order to (at no cost to DHHL) get modern telecommunications service to the all the native

Hawaiians residing on HHL in the SIC study area. This was confirmed in a letter to the FCC authored by DHHL dated December 23, 2004 which stated, in pertinent part:

...DHHL fully supports SIC continuing to provide telecommunications services on Hawaiian home lands ("HHL") and reaffirms its exclusive license issued in 1995.

Hawaiian home lands are held in trust for the benefit of native Hawaiians. They consist of over 70 non-contiguous parcels totaling over 200,000 acres located on the 6 major Hawaiian Islands. The provision of modern, reliable telecommunications infrastructure and services is important to our mission to rehabilitate our beneficiaries. These services impact quality of life, health education, personal safety; and serve as a platform for economic development. **Prior to issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure. Today these beneficiaries enjoy the same service that is available in urban areas. Additionally, SIC is now investing tens of millions of dollars to pay for the communications infrastructure in the areas DHHL is currently developing.**

Letter dated December 23, 2004 from Micah Kane, Chair of the Hawaiian Homes Commission to Marlene H. Dortch of the Federal Communications Commission. (emphasis added). A copy is attached as Exhibit "B."

Thus, the FCC has known and understood from the outset that the License DHHL granted to WEI is an exclusive license; that DHHL has the autonomy and authority to enter the License and that the License was negotiated and entered because it benefitted the native Hawaiian trust beneficiaries who DHHL is supposed to serve. The exclusive License is in the interest of the trust, as it got modern telecommunications service to all of the homesteaders in the SIC study area, no matter how remote they may have been.

The DHHL's sole authority over the disposition of the HHL, its authority to grant the License and exclusively control telecommunications on the HHL is confirmed in the correspondence attached hereto as Exhibits "G" through "I."

### **III. ADDITIONAL FACTS REGARDING THE EXCLUSIVE LICENSE**

While the License covers all of the HHL, SIC's study area does not. The relatively urban portions of the HHL that were already being serviced by the phone company have been excluded from SIC's study area. The local, incumbent phone company continues to serve those portions of the HHL that were excluded from SIC's study area. WEI and SIC have never claimed that the License prevents competing service in those areas.

Moreover, SIC has never claimed USF funds for service provided to HHL-residents who are not within SIC's study area.

SIC and WEI have objected to the hundreds of millions of dollars that FCC and Universal Service Administration Company ("USAC") have provided to competing telecommunications companies, because they take the money and do nothing for the residents of the HHL. Nevertheless, the fact that FC and USAC have paid these sums for service to the SIC study area in competition with SIC confirms that FCC and USAC recognize that the License does not prohibit competition. The same would be true if any telecommunications company sought to use SIC's lines to deliver competing service to the HHL. No such request has ever been made.

### **IV. DISCUSSION**

#### **A. THE HAWAIIAN HOMELANDS ARE COMPARABLE TO TRIBAL LANDS THAT EXIST IN OTHER STATES**

The 1921 Act essentially created the Hawaiian Homes Commission, with sovereignty over the 200,000 acres of trust lands. As such, it was, and is, well within DHHL's authority under federal and state law to enter an exclusive License with WEI governing the disposition of portions of the HHL. FCC acknowledged the DHHL's powers in its February 3, 1998 Order:

The DHHL is a State agency created by a Federal statute in 1921 and was made part of Hawaii's State Constitution when Hawaii was granted Statehood in 1959. The Hawaii Homes Commission Act set aside approximately 200,000 acres of the ceded public lands for homesteading by native Hawaiians and granted the DHHL jurisdiction over these lands. The DHHL has exclusive statutory control of and responsibility for the management of lands in the State of Hawaii designated as Hawaiian Home Lands.

February 3, 1998 Order at footnote 11. The same Order also acknowledges the License:

On May 9, 1995, Sandwich Isles received a license from the Department of Hawaiian Home Lands ("DHHL") for the construction and operation of a telecommunications network on Hawaiian Home Lands ("HHL") throughout Hawaii.

Id. at page 3. Of course, Exhibit "A" describing the License in more detail was also before the FCC when FCC issued the Order. A copy of the Order is attached hereto as Exhibit "C."

Congress and the State of Hawaii have thus granted DHHL autonomy over the HHL, with exclusive control of all rights to the use of the Home Lands. DHHL has the authority to dispose of the lands, through leases and licenses, as DHHL determines appropriate without interference from the state or federal government. DHHL had every right to enter an exclusive License with WEI; and the License was obviously a big success for DHHL as it resulted in telecommunications service being brought to DHHL's trust beneficiaries. DHHL's relationship to the HHL is comparable to the "sovereign" lands under the United States treaties with native Americans. The FCC's own rules include the HHL within the definition of "Tribal Lands." See e.g. 47 CFR 54.5, which reads, in pertinent part:



“Tribal lands” include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e), as well as Hawaiian Home Lands ...(emphasis added)

Indeed, there would be no justification to treat the HHL any differently. The FCC lacks the power to interfere with the binding agreement DHHL voluntarily negotiated with WEI regarding the disposition of the HHL over which DHHL has sovereign authority.

**B. THE EXCLUSIVITY GRANTED TO WEI WAS DELIBERATELY GRANTED BECAUSE IT WAS IN DHHL’S INTEREST. WEI WAS (AND REMAINS) THE ONLY PARTY WHO WOULD AGREE TO PROVIDE MODERN TELECOMMUNICATIONS SERVICE TO THE UNSERVED PORTIONS OF THE HAWAIIAN HOMELANDS**

The License was granted to SIC because DHHL wanted to get modern telecommunication service to all of the HHL. No one else was willing to do it, and to this day no one has ever proposed to provide competing service to all of the HHL<sup>2</sup>. DHHL had the power to grant the License and they did so because it was in their interest.

As the correspondence attached to this Reply makes clear, before the License was granted, many of the residents of the HHL had no telecommunications service at all. The License has made it possible to provide telecommunication service to each homesteader in the SIC study area, at no cost to DHHL and at a cost to the homesteaders in SIC’s study area comparable to the amount paid in urban areas for similar service. As DHHL expressly said to the FCC:

SIC has been able to provide this service without contributions in aid of construction from either DHHL or its beneficiaries. This has allowed DHHL to utilize the funds it previously would be required

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<sup>2</sup> If a telecommunications company sought to use SIC’s lines, this could likely be agreed upon pursuant to the “unbundled network elements” (UNE) approach.

to spend to install communications infrastructure to fulfill our mission.

Exhibit B, page 2.

The FCC should note the many correspondence native Hawaiian beneficiaries have sent to the Commission on this important issue. For example, the February 1, 2017 letter from Jeff Gilbreath, Executive Director of Hawaii Community Assets states:

While SIC has provided our organization with services over the last 10 years, it has been their commitment to providing affordable phone products and internet services to the 9,000+ Hawaiian Home Lands residents that has made them a fixture in our communities. Prior to SIC's founding in 1988, our Hawaiian Home Lands residents either received telecommunications services at nearly triple the cost, or worse, did not receive any such services whatsoever. SIC remains the only telecommunications provider in the State of Hawaii that has demonstrated an unwavering commitment to our people, fulfilling their responsibility of being a "life line" for our families.

For the FCC's reference, a copy of Mr. Gilbreath's letter is attached hereto as Exhibit "D."

Another example is the letter authored by Mr. Alvin Parker, of the Ka Waihona o ka Na'auao-Public Charter School, located in Wai'anae, Hawaii:

SIC has served our school well since it began providing service to our rural communities that were by-passed by other telephone companies. Because of SIC's commitment, our students are able to have state-of-the-art telecommunications services to advance their knowledge and learning.... No other telecommunications carrier would provide our school with the necessary technology, dedication and care that SIC offers.

A copy of this letter is attached as Exhibit "E." DHHL's decision to negotiate and enter the License was a valid, proper and beneficial exercise of DHHL's autonomy over the HHL and it has achieved its purpose.

Additionally, geographic exclusivity was **required** by the Rural Utilities Service ("RUS") as a condition to RUS providing financing to construct the infrastructure for the badly

needed telecommunication services to the unserved HHL residents within SIC's study area.

DHHL greatly

**C. THE EXCLUSIVE LICENSE WAS KNOWN TO THE FCC AND APPROVED WITHOUT CONTROVERSY BECAUSE IT PRESENTED THE SENSIBLE WAY FOR DHHL TO EXERCISE ITS SOVEREIGNTY OVER THE HOME LANDS AND ACCOMPLISH ITS OBJECTIVE OF PROVIDING ITS TRUST-BENEFICIARIES WITH TELECOMMUNICATIONS SERVICE**

In 1997, DHHL wrote to FCC explaining that "the HHC issued an exclusive License to SIC on May 9, 1995 to build, construct, repair, maintain and operate a broad band telecommunications network on HHL." (Exhibit "A"). This has been repeated many times over the years in numerous communications to the FCC. For example on June 2, 1998 DHHL again wrote to the FCC discussing the fact that the Act gave DHHL "exclusive land use powers" over the HHL and that the DHHL had "issued an exclusive license agreement" to WEI. (Exhibit "F" attached hereto). Everyone – including DHHL and the FCC – has signed-off on, approved of, and benefitted from this relationship for two decades. There is no reason, and no basis, to "change the rules of the game" at this point.

**D. SECTION 253(a) DOES NOT PRECLUDE THE DEPARTMENT OF HAWAIIAN HOMELANDS FROM DEALING WITH ITS REAL ESTATE INTERESTS, SUCH AS GRANTING RIGHTS OF WAY OVER LAND THAT IT OWNS, AS IT SEES FIT**

Title 47 U.S.C. Section 253(a) provides, in pertinent part, that

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service

This statute is inapplicable because, as is discussed above, DHHL is not the State. DHHL has sovereign authority over the HHL and even the State's governor and other state agencies lack authority to interfere with DHHL's decisions. DHHL has no jurisdiction over

more than 95% of the State of Hawaii<sup>3</sup>. Additionally, the License does not prohibit the ability of any entity to provide interstate or intrastate telecommunications service.

There is a substantial body of law that confirms the License negotiated between WEI and DHHL does not violate 47 U.S.C. 253(a) and/or is expressly exempted by 47 U.S.C. 253(c). It is clear that Section 253(a) does not prohibit state and local governments, as landowners, from selling, disposing-of or otherwise bargaining with the land rights that they own. Here, DHHL is expressly empowered by law to lease and License the lands that it owns and has autonomy over.

Section 253(a) must be read together with Section 253(c) which provides assurance that the law does not interfere with the local governments' long-standing authority to regulate public property without interference from the FCC:

By expressly excluding "rights-of-way" management from the preemptive scope of § 253(a), the § 253(c) safe harbor indicates an intent to preserve, rather than displace, **local governments' historic ability to regulate the use of public property**

Telebeam Telecommunications Corporation v. City of New York, 194 F.Supp.3d 178, (E.D. NY 2016) (emphasis added). This is exactly what occurred with the License. The DHHL is exercising its regulatory power over approximately 200 thousand acres it has sovereignty over, out of more than 4 million acres in the State of Hawaii.

In enacting the 1996 Telecom Act, Congress did not authorize the FCC to question the longstanding 1921 Act, which is a cornerstone of the Hawaii Statehood Act. DHHL's sovereignty over the HHL, and authority to enter the exclusive license have been recognized and accepted by the FCC and DHHL for the entire more than 20 years the license has been in existence. There are no grounds to change that position now.

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<sup>3</sup> Hawaiian Home Lands consist of approximately 200,000 acres. The State of Hawaii is over 4,000,000 acres.

**E. THE LICENSE WHICH DHHL VOLUNTARILY NEGOTIATED (AND ENTHUSIASTICALLY SUPPORTED TO THE FCC) DOES NOT PREVENT COMPETITION**

The law is well established that in order to show a violation of Section 253(a), the challenger must show “actual or effective prohibition” of competition. A “mere possibility of prohibition” is insufficient. Level 3 Communications L.L.C. vs. City of St. Louis Mo., 477 F.3d 528 (8<sup>th</sup> Cir. 2007). In short:

A challenge to government action under Section 253(a), “must establish either an outright prohibition or an effective prohibition on the provision of telecommunications services; a plaintiff’s showing that a locality could potentially prohibit the provision of telecommunications services is insufficient.

Sprint Telephony PCS, L.P. v. County of San Diego, 543 F.3d 571 (9<sup>th</sup> Cir. 2008).

This standard simply has not been met. Mobi has been certified by the Hawaii Public Utilities Commission as an ETC to provide telecommunications services to the same study area as SIC’s study area. Mobi has received over \$111 million dollars in USF support for allegedly providing competitive service to the HHL.

Additionally, T-Mobile was certified as an ETC (through 2013 when it voluntarily surrendered its ETC designation) and received USF payments for services to the HHL. Certainly the License was not an impediment to competition from these firms.

Competing telecommunications companies could have, but so far have not, sought permission to use the SIC lines over DHHL land in order to provide competitive telecommunications service in SIC’s study area. This is the entire basis of the unbundled network elements (UNE), an important principle of the FCC’s position on competition among telecommunications companies. Yet, no telecommunications company has ever sought to use SIC’s lines to deliver competing service to the HHL.

It is not a surprise that no competitor has sought to provide service over SIC's lines. Before DHHL negotiated the License to WEI, no telecommunication company was interested in providing service to all of the HHL because such service would not be profitable. Hence, there is in reality no real issue regarding Section 253(a). No competitor wants to provide the service that is being provided under the License.

In the 20 years that the License has existed, the only telecommunications companies that have sought authorization to provide service to the HHL are two cell phone companies, both of which have been granted legal permission to do so. Both AT&T and Crown currently operate cell towers on HHL under Waimana's License. Since SIC'S incorporation, Hawaiian Tel has refused to enter into an interconnection agreement with SIC. There is simply no basis to claim that there is either "an outright prohibition" or any "effective prohibition on the provision of telecommunications services." To the contrary, to the extent there is interest in competing for service to the HHL, telecommunications companies have been allowed to do so.

In considering the application of Section 253(a), we ask that the FCC consider the observation of the United States District Court for the District of Maryland. The Court addressed a challenge to terms imposed by the Maryland National Capital Park & Planning Commission for renewal of a license. In rejecting the challenge, the Court noted in a footnote:

the Court must express considerable skepticism as to whether Congress, through its enactment of section 253 of the FTA, intended to, or could, bind every **state, county, city, or other local government entity that owns land** without regard to the nature of the land in question. In the name of "promot[ing] competition and reduc[ing] regulation," it is doubtful that Congress intended to burden all property, regardless of its nature, and it certainly would appear that section 253 may have been intended to be limited to public rights-of-way that are typically franchised to a variety of utilities and communications services providers...

Qwest Communications Corp. v. Maryland-National Capital Park & Planning Com'n, 553

F.Supp.2d 572, 576 fn 8 (2008) (emphasis added).

In sum, DHHL has the legal right and authority over its land to contract as it sees fit. In the 1990's it used that power to negotiate a very good deal for itself, which has been fully performed by the licensee. Section 253(a) does not give the DHHL any basis to escape its commitments thereunder.

## **V. CONCLUSION**

From review of the Act, it is apparent that DHHL has the equivalent of sovereign authority over the HHL. Neither the Hawaii State government nor the FCC has authority to overrule or interfere with HHL's exercise of its authority over the land that it owns. Accordingly, the License DHHL entered over 20 years ago is entirely appropriate and unassailable under section 253(a).

Additionally, the exclusivity contained in the License was entirely appropriate because it was made in exchange for WEI's commitment to provide modern telecommunications service to all of the HHL no matter how remote. The letters from DHHL (attached) emphasize this point and the fact that no one else had expressed any interest in bringing service to all of the HHL in SIC's study area. None of this was conducted in secrecy. It was fully known to the FCC from the outset as is again disclosed through the numerous correspondence.

Finally, there is no indication that the License in actual fact prohibits competition for telecommunication services on the HHL. To the contrary, Mobi has received over \$111 million for its service provided on HHL in competition with SIC; T-Mobile also received USF funds for service provided to SIC's study area. No telecommunications company has sought to provide

service to the HHL over SIC's lines pursuant to the unbundled network elements. It simply cannot be said that the License prohibits competition.

Any guidance given to DHHL should be that the License does not violate Section 253(a) nor any other law.

DATED: Honolulu, Hawaii, February 27, 2017.

/s/ Lex R. Smith

LEX R. SMITH

MARIA Y. WANG

Attorneys for Waimana Enterprises, Inc.



# EXHIBIT A

BENJAMIN J. CAYETANO  
GOVERNOR  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879  
HONOLULU, HAWAII 96808

KALI WATSON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

May 14, 1997

Common Carrier Bureau  
Federal Communications Commission  
2000 L Street, N.W.  
Washington, D.C. 20554

Dear Madam/Sir:

Subject: Sandwich Isles Communications, Inc. - Expedited  
Universal Service Fund (USF) Payment Request and  
Eligible Carrier Designation

This letter is written in response to a request from Sandwich Isles Communications, Inc. ("SIC") which has filed a request for expedited USF payments. We also understand that SIC will be filing other requests to the Federal Communications Commission ("FCC") in the future in compliance with the Telecommunications Act of 1996. We are hopeful that this letter will provide the necessary information required for the FCC to act favorably and expeditiously upon SIC's request for expedited USF payments, as well as for other requests.

The United States Congress enacted the Hawaiian Homes Commission Act on July 9, 1921 ("Act") and established the Hawaiian home land trust. At the time of statehood in 1959, the Hawaiian Homes Commission Act was incorporated into the Hawaii State Constitution and the Department of Hawaiian Home Lands was created to manage the trust and to carry out the mission as intended under the Act.

The ACT gave exclusive land use powers to the Hawaiian Homes Commission ("HHC") and exempted Hawaiian home lands ("HHL") from the authority of the Governor, allowing the HHC to operate independently of many state and county regulations. Public utilities cannot service Hawaiian home lands without permission of the HHC and cannot exercise the power of eminent domain on HHL.

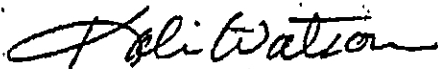
Common Carrier Bureau  
May 14, 1997  
Page 2

The HHC issued an exclusive license to SIC on May 9, 1995 to build, construct, repair, maintain and operate a broad band telecommunications network on HHL. By such license, the HHC, a state commission with the authority on HHL, designates SIC as an eligible carrier under Section 214 of the Telecommunications Act of 1996 within the properties of the HHL. Moreover, the HHC fully supports SIC's request for expedited USF payments as well as any future SIC requests that will accelerate the installation of the state of the art telecommunications technology within HHL. The HHC views an affordable state of the art telecommunications system a key part of our plan to making residential and economic opportunities available to our beneficiaries.

On behalf of the HHC, I urge you to grant SIC's request for expedited USF payments.

Should you have any questions, please feel free to call me at (808) 586-3800 or Mr. Ray Soon, our Land Management Division Administrator at (808) 586-3820.

Aloha,



KALI WATSON, Chairman  
Hawaiian Homes Commission.

c: Sandwich Isles Communications, Inc.

# EXHIBIT B

LINDA LINGZ  
GOVERNOR  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. BOX 1111  
HONOLULU, HAWAII 96801

MICHAEL A. KANG  
CHAIRMAN  
HAWAIIAN HOME LANDS COMMISSION  
DEN HONDERSEKON  
DEPUTY TO THE CHAIRMAN  
KAULANA H. PARK  
EXECUTIVE ASSISTANT

December 23, 2004

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Ms. Dortch:

Re: AAD 97-82: Sandwich Isles Communications, Inc., Petition for Study Area Waiver

Sandwich Isles Communications, Inc. (SIC) was issued an exclusive license by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) on May 9, 1995 to provide telecommunications services on the trust lands we administer.

Additionally, on May 14, 1997, DHHL designated SIC an eligible telecommunications carrier (ETC) under Section 214 of the 1996 Communications Act within our Hawaiian home lands properties. Subsequent to our initial designation and in response to the FCC issuing further qualifying rules, DHHL reconfirmed its ETC designation for SIC on June 2, 1998.

We now understand the FCC in the above referenced docket is requiring SIC to petition for a Study Area Waiver. For purposes of granting that waiver, DHHL fully supports SIC continuing to provide telecommunications services on Hawaiian home lands (HHL) and reaffirms its exclusive license issued in 1995.

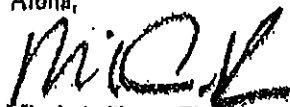
Hawaiian home lands are held in trust for the benefit of native Hawaiians. They consist of over 70 non-contiguous parcels totaling over 200,000 acres located on the 6 major Hawaiian Islands. The provision of modern, reliable telecommunications infrastructure and services is important to our mission to rehabilitate our beneficiaries. These services impact quality of life - health, education, personal safety; and serve as a platform for economic development. Prior to issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure.

Ms. Mariene H. Dortch  
December 23, 2004  
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Today these beneficiaries enjoy the same service that is available in urban areas. Additionally, SIC is now investing tens of millions of dollars to pay for the communications infrastructure in the areas DHHL is currently developing.

SIC has been able to provide this service without contributions in aid of construction from either DHHL or its beneficiaries. This has allowed DHHL to utilize the funds it previously would be required to spend to install communications infrastructure to fulfill our mission.

Aloha,



Mica A. Kane, Chairman  
Hawaiian Homes Commission

cc: Sandwich Isles Communications, Inc.

# EXHIBIT C

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Sandwich Isles Communications, Inc. )

AAD 97-82

Petition For Waiver of Section 36.611 of the )  
Commission's Rules and Request for Clarification )

### ORDER

Adopted: February 3, 1998

Released: February 3, 1998

By the Chief, Accounting and Audits Division:

#### I. INTRODUCTION

1. On July 8, 1997, Sandwich Isles Communications, Inc. ("Sandwich Isles") filed a petition requesting a waiver of Section 36.611 of the Commission's rules to enable it to receive high cost loop support immediately.<sup>1</sup> Sandwich Isles also seeks clarification or, to the extent necessary, waiver of the definition of "incumbent local exchange carrier" ("incumbent LEC") for the purpose of application of Part 69 rules and for calculation of high cost loop support to ensure that its activities in providing initial service to unserved areas is accorded appropriate regulatory treatment. In this Order, we grant in part and deny in part the petition, as explained below.

#### II. BACKGROUND

2. In 1984, the Commission established high cost support mechanisms to promote the nationwide availability of telephone service at reasonable rates.<sup>2</sup> Specifically, high cost loop support allows incumbent LECs with high local loop costs to allocate an additional portion of those costs to the interstate jurisdiction, enabling the state jurisdictions to establish lower local

<sup>1</sup> Sandwich Isles Communications, Inc., Petition for Waiver, AAD 97-82 (July 8, 1997). On July 14, 1997, the Accounting and Audits Division ("Division") released a public notice soliciting comments on the petition for waiver. *Public Notice*, 12 FCC Red 6876 (Com. Car. Bur. 1997). Comments were filed by the National Exchange Carrier Association ("NECA"). Reply comments were filed by the National Telephone Cooperative Association ("NTCA") and Sandwich Isles. On September 15, 1997, GTE Hawaiian Telephone Company, Inc. ("GTE") filed a Petition to Accept Late-Filed Comments and an Opposition to Sandwich Isles' Petition for Waiver and Request for Clarification and Affidavit in Support of Opposition. On September 24, 1997, Sandwich Isles filed a Notification of Intent to File Reply and on October 2, 1997, Sandwich Isles filed a Reply to GTE's Late-Filed Comments and Opposition.

<sup>2</sup> See generally, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 96 FCC 2d 781 (1984).



exchange rates in study areas receiving such assistance.<sup>3</sup> Under these rules, a carrier's high cost loop support is based on the relationship of its historical loop cost to the national average historical loop cost.<sup>4</sup>

3. In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Communications Act of 1934, as amended.<sup>5</sup> Under the new federal universal service support mechanisms, support for high cost areas will be based upon forward-looking economic cost mechanisms. Thus, a carrier's support will be based on the forward-looking economic cost of providing the supported services to a service area. Non-rural incumbent LECs will receive support based on forward-looking economic costs beginning January 1, 1999; rural incumbent LECs will begin to receive support based on forward-looking economic costs no earlier than January 1, 2001.<sup>6</sup> Until an incumbent LEC's high cost loop support is based on forward-looking economic costs, its support will continue to be based on historical cost data.

4. In accordance with Sections 36.611 and 36.612 of the Commission's rules, on July 31 of each year, incumbent LECs submit to NECA loop cost data for the prior year.<sup>7</sup> NECA compiles and analyzes this data to determine the average cost per loop for each incumbent LEC as well as the nationwide average cost per loop. Each incumbent LEC's high cost loop support amount for the following year is based upon the relationship between its average cost per loop and the nationwide average cost per loop. Because the loop cost data is not submitted by carriers until seven months after the end of a calendar year and because NECA requires time to compile and analyze the data, support is not provided generally to carriers until two years after costs are incurred.<sup>8</sup> This lag can be less than two years if quarterly updates are filed.<sup>9</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> See 47 C.F.R. § 36.611.

<sup>5</sup> See Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 at ¶ 308 (May 8, 1997) ("*Universal Service Order*").

<sup>6</sup> *Id.*

<sup>7</sup> See 47 C.F.R. §§ 36.611 and 36.612.

<sup>8</sup> For example, on June 30, 1996, incumbent LECs submitted 1995 loop cost data which was used to determine their 1997 high cost loop support. Thus, there is a two-year lag between when costs are incurred (1995) and receipt of high cost support (1997).

<sup>9</sup> See 47 C.F.R. § 36.612.

## III. PETITION AND COMMENTS

5. *Petition.* Sandwich Isles is a new telephone company seeking to provide telephone exchange service to rural customers in a previously unserved area.<sup>10</sup> Sandwich Isles states that it will provide service to approximately 4,700 customers over the next five years. On May 9, 1995, Sandwich Isles received a license from the Department of Hawaiian Home Lands ("DHHL")<sup>11</sup> for the construction and operation of a telecommunications network on Hawaiian Home Lands ("HHL") throughout Hawaii. On November 14, 1997, the Hawaii Public Utilities Commission ("Hawaii Commission") authorized Sandwich Isles to provide interLATA and intrastate telecommunications services within and between the HHL throughout Hawaii.<sup>12</sup> Sandwich Isles states that over the next 10 to 15 years it will initiate service to unserved portions of HHL on the Islands of Oahu, Hawaii, Maui, Kahoolawe, Lanai, Molokai, and Kauai.<sup>13</sup> Sandwich Isles states that it initiated local exchange service on December 2, 1997, through the services of a wireless carrier.<sup>14</sup>

6. Sandwich Isles seeks a waiver of Section 36.611 to permit it to receive high cost loop support based on current costs, and to direct NECA to begin making high cost loop support payments to Sandwich Isles immediately.<sup>15</sup> Sandwich Isles proposes to submit to NECA a rolling annualized average of current costs, which would be subject to true-up adjustments quarterly based on actual costs.<sup>16</sup> Sandwich Isles states that this methodology previously has been met with Commission approval.<sup>17</sup> Sandwich Isles states that, although initial high cost loop support payments would be based on projections, the projections would be updated quarterly with actual cost data. Thus, reliance on projected cost data would be diminished, and ultimately high cost

<sup>10</sup> Petition at 2.

<sup>11</sup> The DHHL is a State agency created by a Federal statute in 1921 and was made part of Hawaii's State Constitution when Hawaii was granted Statehood in 1959. The Hawaii Homes Commission Act set aside approximately 200,000 acres of the ceded public lands for homesteading by native Hawaiians and granted the DHHL jurisdiction over these lands. The DHHL has exclusive statutory control of and responsibility for the management of lands in the State of Hawaii designated as Hawaiian Home Lands. Petition at 4.

<sup>12</sup> See Hawaii Public Utilities Commission, Order No. 16078, Docket No. 96-0026, dated November 14, 1997.

<sup>13</sup> Petition at 5.

<sup>14</sup> Letter from Sylvia Lesse, Kraskin & Lesse, to Magalie Roman Salas, Secretary, FCC, dated January 6, 1998.

<sup>15</sup> Petition at 2-3.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* See Border to Border Communications, Inc., Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, *Memorandum Opinion and Order*, 10 FCC Red 5055 (1995) ("Border to Border").

loop support payments for the initial year of operation would be based solely on actual cost.<sup>18</sup>

7. Sandwich Isles argues that application of the Commission's rules in this instance would be contrary to the public interest because it would deny high cost loop support to a new company proposing to provide initial service to a rural area.<sup>19</sup> Sandwich Isles states that failure to grant a waiver would result in substantial increases in local rates.<sup>20</sup> Sandwich Isles also asserts that increased local rates would discourage subscription to local telephone service and jeopardize the future availability of service, a result antithetic to the goals of universal service policies. Thus, Sandwich Isles contends that the primary principle underlying Section 36.511--the promotion of nationwide availability of telephone service at reasonable rates by assisting incumbent LECs operating in high cost areas--would be frustrated without the grant of the requested waiver.<sup>21</sup>

8. To enable the provision of service, Sandwich Isles also seeks clarification or, to the extent necessary, waiver of the definition of "incumbent LEC" to ensure that the treatment of Sandwich Isles is consistent with that of other similarly situated carriers. In addition, Sandwich Isles states the Commission should clarify and confirm that Sandwich Isles is eligible to participate in NECA under Part 69 rules.<sup>22</sup>

9. *Comments.* NECA and NTCA support Sandwich Isles' Petition. NECA states that the methodology proposed by Sandwich Isles is administratively feasible and can be incorporated in NECA's current high cost loop support reporting mechanisms.<sup>23</sup> NTCA states that grant of this waiver is clearly in the public interest and consistent with the underlying goal of universal service.<sup>24</sup>

#### IV. DISCUSSION

10. Waiver of Commission rules is appropriate only if special circumstances warrant deviation from the general rule and such a deviation will serve the public interest.<sup>25</sup> Further, the

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<sup>18</sup> Petition at 11.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> NECA comments at 3.

<sup>24</sup> NTCA comments at 2.

<sup>25</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1154, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

## Federal Communications Commission

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waiver generally must be consistent with the principles underlying the rule for which a waiver is requested.<sup>26</sup> In previous proceedings, the Division granted waivers of Section 36.611 permitting Border to Border Communications, Inc. ("Border to Border") and South Park Telephone Company ("South Park") to receive high cost loop support without delay, using projected costs rather than the required historical costs. We permitted immediate access to high cost support because the carriers were offering to serve previously unserved areas which would have likely remained without service if these carriers were unable to provide service.<sup>27</sup> In these proceedings, we found compelling reasons to permit immediate high cost loop support for new carriers providing service to unserved areas. In these proceedings, we also concluded that denying immediate high cost loop support could have the unintended effect of discouraging service in unserved, remote areas, thereby frustrating the Commission's goal of promoting universal service at reasonable rates.

11. Sandwich Isles' circumstances are sufficiently similar to warrant the same treatment as Border to Border and South Park. Because Sandwich Isles will provide service to previously unserved areas, we find that the special circumstances warranting the grant of a waiver of the Commission's rules are present and that it is in the public interest to grant Sandwich Isles' request for a waiver of Section 36.611 of the Commission's rules. Therefore, we grant Sandwich Isles a waiver of Section 36.611 of the Commission's rules to the extent necessary to permit it to receive high cost loop support for the period January 1, 1998 through December 31, 1999 based initially on projected costs followed by quarterly true-ups using actual costs. Payments beginning in the year 2000 will be based on the historic data on which high cost loop support traditionally is calculated and in accordance with the rules adopted in the *Universal Service Order*. Support payments, however, are contingent on Sandwich Isles satisfying the eligibility requirements specified in Section 214(e) of the Act.<sup>28</sup> Finally, because this Order provides the final regulatory approval necessary for Sandwich Isles to initiate service, we make it effective upon release.

12. Sandwich Isles initiated service on December 2, 1997. Sandwich Isles proposes to receive support for the period December 2, 1997 to December 31, 1997 based on annualized projected costs. High cost loop support payments are traditionally calculated based on 12-month calendar year historic operating results. Calculating initial high cost loop support based on an annualization of operating data from December 2, 1997 to December 31, 1997 does not provide an adequate basis upon which to compute high cost loop support because of the potential volatility of annualizing based on 30 days of operations and because of the potentially higher operating costs in the initial 30-day period due to higher costs associated with initiating service. We, thus, deny Sandwich Isles' request for a waiver to allow it to receive high cost loop support for the period December 2, 1997 to December 31, 1997.

<sup>26</sup> *City of Angels Broadcasting Inc. v. FCC*, 745 F.2d 656, 662-63 (D.C. Cir. 1984).

<sup>27</sup> See *Border to Border*, *supra* note 17. See also *South Park Telephone Company*, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, Order, DA 97-2730 (December 31, 1997).

<sup>28</sup> See 47 U.S.C. § 214(e).

13. We also find it reasonable that Sandwich Isles participate in NECA pools and tariffs. Participation in NECA will allow Sandwich Isles to avoid the costs of filing and maintaining its own company-specific interstate tariffs. The cost of preparing company-specific tariffs could be excessive for a company with relatively few customers. In addition, because Sandwich Isles plans to make large capital investments to initiate service, its company-specific rates would likely be extremely high.<sup>29</sup> Therefore, it is in the public interest to permit Sandwich Isles and its potential customers to benefit from both the cost savings and lower rates available through NECA participation. Having reached this conclusion, we now address the specific waivers necessary to allow it to participate in the NECA tariffs and pools.

14. To be a member of NECA and to participate in its tariffs, it must be a "telephone company," as defined in Part 69 of the Commission's rules.<sup>30</sup> Part 69 defines a "telephone company" as an incumbent LEC as defined in Section 251(h) of the Act.<sup>31</sup> Furthermore, Section 36.611 of the Commission's rules, which governs the submission of data to NECA for purposes of calculating high cost loop support, only applies to incumbent LECs.<sup>32</sup> Section 251(h)(1) of the Communications Act states that an "incumbent LEC" is a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act.<sup>33</sup> The section also provides that a successor or assign of an incumbent LEC is also an incumbent LEC. Sandwich Isles is a new carrier initiating service to an unserved area. It is not a member of NECA, and it is neither a successor nor assign of an incumbent LEC. Sandwich Isles, therefore, does not meet the statutory definition of incumbent LEC.

15. When the Commission revised Sections 36.611 and 69.2 to require that telephone companies be incumbent LECs to participate in NECA tariffs and pools and to file data pursuant to Section 36.611, the Commission did not specifically provide for companies that come into existence after the enactment of the 1996 Act and that serve previously unserved areas. The purpose of the incumbent LEC restriction in Section 36.611 is to distinguish competitive LECs from incumbent LECs for purposes of calculating universal service support, not to impose interconnection requirements. Sandwich Isles will be the sole provider of service to the area; thus, it is not a competitive LEC. As a rural telephone company,<sup>34</sup> Sandwich Isles is exempt

<sup>29</sup> Petition at 7.

<sup>30</sup> See 47 C.F.R. § 69.601.

<sup>31</sup> 47 C.F.R. § 69.2(h).

<sup>32</sup> See 47 C.F.R. § 36.611.

<sup>33</sup> See 47 U.S.C. § 251(h)(1).

<sup>34</sup> See 47 U.S.C. § 153(37). Under this section "the term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity... provides telephone exchange service, including exchange access, to fewer than 50,000 access lines..." Sandwich Isles will satisfy this criterion and, therefore, it is a rural telephone company.

from the interconnection requirements in Section 251(c) until the company receives a *bona fide* request for interconnection, services, or network elements; and the Hawaii Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of the Act.<sup>35</sup> Accordingly, we find that the purposes underlying the incumbent LEC requirements in Parts 36 and 69 of the Commission's rules are not applicable to Sandwich Isles' request to receive high cost loop support and to participate in NECA. We therefore waive the incumbent LEC requirements of Part 36 and Part 69 of the Commission's rules for Sandwich Isles. This waiver permits Sandwich Isles to become a member of NECA and to participate in NECA pools and tariffs, but does not affect Sandwich Isles' obligations under Section 251. Furthermore, for regulatory purposes we will recognize Sandwich Isles' service territory in Hawaii as a study area.<sup>36</sup>

16. We also address in this Order a petition submitted by GTE 32 days after the filing deadline. In its Petition to Accept Late-Filed Comments, GTE asserts that its late filing is attributable to disruption resulting from the promotion of critical senior GTE personnel at a time when, in addition to this proceeding, GTE was involved in other substantial litigation and regulatory proceedings before the Commission, the Hawaii Commission, and the Hawaii Supreme Court. GTE states that the Commission has found good cause for acceptance and consideration of late-filed comments where the party filing the late comments "was involved in substantial litigation" (citing *In re Complaint of Syracuse Peace Council*, 2 FCC Rcd 5043, 5060 n. 53 (1987)). In the Syracuse Peace Council case, the Commission did accept the American Civil Liberties Union's ("ACLU") Motion for Leave to File Comments Out-of-Time because it was involved in other substantial litigation. ACLU, however, filed its comments only seven days late. Generally, it is not Commission policy to accept late-filed comments.<sup>37</sup> Therefore, the Petition to Accept Late-Filed Comments filed by GTE Hawaiian Telephone Company, Inc. on September 15, 1997, is denied.

## V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 5(c), 201, 202, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, 218-220, 254, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the Petition of Sandwich Isles Communications, Inc. for waiver of

<sup>35</sup> See 47 U.S.C. § 251.

<sup>36</sup> See Request for Clarification filed by the National Exchange Carrier Association, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 8646 at ¶ 9 (1996) (establishing that a study area waiver is not required where a separately incorporated company is establishing a study area for previously unserved territory).

<sup>37</sup> See *AT&T Communications, Revisions to Tariff* FCC No. 12, 6 FCC Rcd 5261, Commission denied comments that were filed 32 days late; *AT&T Communications, Revisions to Tariff* FCC No. 12, 6 FCC Rcd 5272, Commission denied comments that were filed 49 days late; *AT&T Communications, Revisions to Tariff* FCC No. 12, 6 FCC Rcd 6654, Commission denied comments that were filed 14 days late.

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Section 36.611 and 69.601 of the Commission's rules, 47 C.F.R. §§ 36.611, 69.601, IS GRANTED to the extent discussed in this Order and otherwise IS DENIED.

18. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 5(c), 201, 202, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(e), 201, 202, 218-220, 254, and Sections 0.91, 0.291 and 1.727 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 1.727 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 1.727 that the "Petition to Accept Late-Filed Comments" filed by GTE Hawaiian Telephone Company, Inc. on September 15, 1997, IS DENIED.

**FEDERAL COMMUNICATIONS COMMISSION***Kenneth P. Moran*

Kenneth P. Moran  
Chief, Accounting and Audits Division

# EXHIBIT D





200 North Vineyard Boulevard, A300  
Honolulu, HI 96817  
Ph: 808-587-7886  
Toll Free: 1-866-400-1116  
[www.hawaiiancommunity.net](http://www.hawaiiancommunity.net)

February 1, 2017

Aloha e FCC Commissioners:

I am writing in my capacity as the Executive Director of Hawaiian Community Assets, Inc. (HCA), a 501c3 nonprofit United States Department of Housing and Urban Development certified housing counseling agency to submit a letter in support of Sandwich Isles Communications (SIC).

HCA has been a business customer of SIC since 2006. Their telecommunications services have been critical to our success in serving low and moderate income individuals with government-certified housing counseling services throughout the State of Hawaii. As the use of internet has become an integral part of our work, we have come to rely on SIC to prepare first-time homebuyers so they are able to access millions of dollars in mortgage financing and create additional opportunities for them to be active contributions to the United States' economy.

While SIC has provided our organization with services over the last 10 years, it has been their commitment to providing affordable phone products and internet services to the 9,000+ Hawaiian Home Lands residents that has made them a fixture in our communities. Prior to SIC's founding in 1988, our Hawaiian Home Lands residents either received telecommunications services at nearly triple the cost, or worse, did not receive any such services whatsoever. SIC remains the only telecommunications provider in the State of Hawaii that has demonstrated an unwavering commitment to our people, fulfilling their responsibility of being a "life line" for our families.

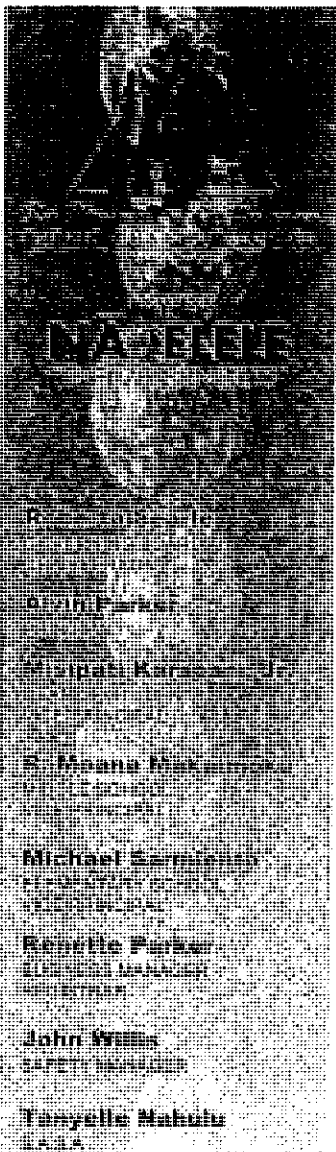
It is for these reasons that we ask you to ensure that SIC continue to operate so that our business and the more than 9,000 residents of Hawaiian Home Lands may receive uninterrupted service. Without SIC, we are concerned that businesses like HCA and families on Hawaiian Home Lands would lose telecommunications services that we have come to rely on, therefore jeopardizing the well-being of our business community, families, and overall economy.

Thank you for the opportunity to submit our organization's comments in support of SIC. Please do not hesitate to contact me directly at 808.587.7653 or at [jeff@hawaiiancommunity.net](mailto:jeff@hawaiiancommunity.net) should you have any questions or need clarification.

Sincerely

Jeff Gilbreath  
Executive Director

# EXHIBIT E



January, 2017

The Commission Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

Aloha FCC Commissioners,

Subject: Response to FCC orders on Sandwich Isles Communications, WC Docket No. 10-90

Sandwich Isles Communications (SIC) has been our telecommunications provider for 13 years. I am concerned that your drastic and severe actions threatening our school's ability to teach using 21<sup>st</sup> century telecommunications. SIC has served our school well since it began providing service to our rural communities that were by-passed by other telephone companies. Because of SIC's commitment, our students are able to have state-of-the-art telecommunications services to advance their knowledge and learning. All industries rely on computers and the internet in today's society. Without SIC our school would not receive the high quality service we now enjoy. In addition, SIC's commitment to our community has provided our school with emergency phones that keep our students safe. No other telecommunications carrier would provide our school with the necessary technology, dedication and care that SIC offers. We strongly support SIC and ask that you do the right thing and maintain its ability to continue its exceptional work to provide telecommunications services.

Mahealani  
Signature

Print

Address

Address

Wai'anae, HI 96792

SIC Subscriber ☒ Yes ☐ No

CC: Senator Brian Schatz  
Senator Mazie Hirono  
Representative Tulsi Gabbard  
Representative Colleen Hanabusa

Governor David Ige  
Chair Jobie Masagatani  
Chair Randall Iwase  
Senate President Ron Kouchi  
House Speaker Joseph Souki

Ka Wai'hona o ka Na'auao  
PUBLIC CHARTER SCHOOL  
89-195 Farrington Highway  
Wai'anae, Hawai'i 96792  
[P] 808.620.9030  
[F] 808.620.9036  
www.kawaihonapcs.org

#### School Vision and Mission:

Ka Wai'hona o ka Na'auao creates socially responsible, resilient, and resourceful young men and women, by providing and environment of academic excellence, social confidence and cultural awareness.

Exhibit E

# EXHIBIT F

BENJAMIN A. CAYetano  
GOVERNOR  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. BOX 1877  
HONOLULU, HAWAII 96808

KALE WICKSON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
  
JOSE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

June 2, 1998

Universal Service Administrative Co.  
100 South Jefferson Road  
Whippany, New Jersey 07981

Dear Madam/Sir:

SUBJECT: Reconfirmation of Sandwich Isles Communications,  
Inc. Designation as an Eligible Telecommunication  
Carrier

This letter is to reconfirm that the Department of Hawaiian Home Lands of the State of Hawaii ("DHHL") has designated Sandwich Isles Communications, Inc. ("SIC") as an Eligible Telecommunications Carrier ("ETC") under the Telecommunications Act of 1996.

The United States Congress enacted the Hawaiian Homes Commission Act on July 9, 1921 (the "Act") and established the Hawaiian home lands trust. At the time of statehood in 1959, the Hawaiian Homes Commission Act was incorporated into the Hawaii State Constitution and the Department of Hawaiian Home Lands was created to manage the trust and carry out the mission as intended under the Act.

The Act gave exclusive land use powers to the Hawaiian Homes Commission ("HHC") and exempted Hawaiian home lands ("HHL") from the authority of the Governor, allowing the HHC to operate independently of many state and county regulations. Public utilities cannot service HHL without permission of the HHC and cannot exercise the power of eminent domain on HHL.

The HHC issued an exclusive license agreement to Waimana Enterprises, Inc. on May 9, 1995, to build, construct, repair, maintain and operate a broad band

Universal Service Administrative Co.

June 2, 1998

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telecommunications network on HHL. The License was partially assigned to SIC on January 15, 1996. By such License and partial assignment, the HHC, a state commission with the authority on HHL, designated SIC as an eligible telecommunications carrier under Section 214 of the Act within the properties of HHL on May 14, 1997.

At the time of our May 14, 1997 designation, the Federal Communication Commission ("FCC") had not issued its rules in regards to the qualifications of a ETC. Since that time, however, the FCC has issued its rules. Therefore, we confirm that SIC qualifies as a ETC under the rules, because it offers the following services:

- voice grade access to the public switched network;
- access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- dual tone multi-frequency signaling or its functional equivalent;
- single-party service or its functional equivalent;
- access to emergency services;
- access to operator services;
- access to interexchange service;
- access to directory assistance; and
- toll limitation services for qualifying low-income consumers.

SIC offers these services by either using its own facilities or a combination of its facilities and the resale of services of another facilities based carrier. Additionally, SIC advertises the availability of, and the prevailing prices for the list of universal services throughout HHL.

Moreover, SIC pursuant to the License, partial assignment, and under the terms specified by its lender, provides voice grade local exchange access utilizing its facilities-based network. SIC offers single party touch-tone service,

Universal Service Administrative Co.

June 2, 1998

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access to operator services and directory assistance, and access to local usage free of usage changes. SIC has implemented 911 and enhanced 911 systems. In addition to standard subscriber notification and public notice procedures, SIC ensures that the availability of its services is well known among the residents of HHL. SIC does offer toll blocking, but has requested an extension of time to offer toll control because of technical feasibility.

Accordingly, we reconfirm SIC designation as a ETC by DHHL.

Should you have any questions, please call Linda Chinn, Acting Branch-Manager, at (808) 587-6432.

Aloha,



KALI WATSON, Chairman  
Hawaiian Homes Commission

c: Members of the Hawaiian Homes Commission  
Waimana Enterprises, Inc./Sandwich Isles  
Communications, Inc.

# EXHIBIT G



IAN J. CAYETANO  
GOVERNOR



STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
406 S. KING STREET, #100  
HONOLULU, HAWAII 96813

OFFICE COPY RECEIVED  
SEP 20 1995

Ans'd.....

YUKIO NAITO  
CHAIRMAN

JOHN P. SPIERLING  
COMMISSIONER

DERNIS R. YAMADA  
COMMISSIONER

September 20, 1995

Albert S.N. Hee  
Sandwich Isles Communications, Inc.  
Pauahi Tower, Suite 1520  
1001 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Hee:

Your letter of September 1, 1995, requests responses to two questions. The questions stem from responses made by the Hawaii Public Utilities Commission's Chief Counsel, Clay Nagao, to questions raised by Mr. Ken B. Chandler of the U.S. Department of Agriculture. We respond to the questions as follows.

Your first question is whether the PUC agrees that the Hawaiian Homes Commission has the power to authorize a public utility to provide service on its lands. Our response is that, pursuant to section 207(c)(1) of the Hawaiian Homes Commission Act of 1920, it appears that the Hawaiian Homes Commission has the power to grant licenses and easements for telephone lines and other utility services.

Your second question is whether the PUC agrees that public utilities do not have the ability to use their power of eminent domain to obtain easements for utility services on Hawaiian Homes lands. Our response is that, pursuant to the State of Hawaii Attorney General's opinion no. 60-77, it appears that a public utility may not acquire any Hawaiian Homes land through eminent domain proceedings, in spite of the right of eminent domain granted to public utilities by Hawaii Revised Statutes section 101-4.

I hope these responses will clarify any confusion that may have been generated by Mr. Nagao's July 18, 1995, letter to Mr. Chandler.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Yukio Naito".

Yukio Naito  
Chairman

YN:CN:ac

# EXHIBIT H



COPIED  
OCT 30 1995  
Ans'd.....

OCT 20 1995

**United States  
Department of  
Agriculture**

Rural Utilities Service

Washington, DC 20250-1500

Mr. Kali Watson  
Chairman  
Hawaiian Homes Commission  
P.O. Box 1879  
Honolulu, Hawaii 96805

Dear Mr. Watson:

We are processing a loan application from Sandwich Isles Communications, Inc. (Sandwich Isles), to provide state-of-art telecommunications in those areas governed by the Hawaiian Homes Commission (HHC). Our regulations require clarification of the jurisdiction role the Hawaii Public Utilities Commission (PUC) will have over Hawaiian Home Lands (HHL). Once this issue is resolved, we will be able to grant interim approval to Sandwich Isles to proceed with some of the construction covered in the loan application. This will allow Sandwich Isles to begin the process of installing digital switched-fiber optic telecommunications facilities on HHL.

It appears that the HHL, in many ways, is similar to Native American Indian (NAI) Reservations in the Continental United States. Historically, telecommunications service on NAI reservations was provided by those utilities serving the surrounding areas. Telecommunications service was regulated on the NAI reservations, along with the service beyond the reservation boundaries, by state regulatory bodies, similar to the PUC. Recently, various Tribal Councils have exercised their authority to designate the companies which provide telecommunications service on the reservations. The Rural Utilities Service (RUS) has made a number of loans to install state-of-the-art telecommunications equipment to those companies designated by the Tribal Councils. In these instances, the state regulatory bodies will typically continue to regulate the company providing service until the tribe designates a different company to provide service on the reservation. At a mutually agreed upon time, the state regulatory body discontinues regulatory functions.



The Rural Utilities Service replaces  
Rural Electrification Administration

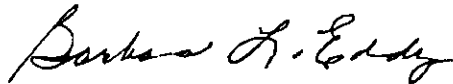
Exhibit H

Mr. Kali Watson

2

It is our understanding that a similar situation exists on HHL. The PUC has generally recognized the HHC has the authority to determine which company can provide telecommunications service on HHL. If this is an accurate assessment of the situation, it would greatly aid our efforts if you would obtain an acknowledgment from the PUC of this situation. We are enclosing a letter that you may choose to use. It is imperative that we resolve this issue as soon as possible so we may issue Sandwich Isles' interim approval on their loan application. Please contact us if you have any questions.

Sincerely,



for ROBERT PETERS  
Assistant Administrator  
Telecommunications Program

Enclosure

cc:  
Mr. Albert S. N. Hee

# EXHIBIT I

BENJAMIN J. CAYetano  
GOVERNOR  
STATE OF HAWAII



OFFICE COPY  
RECEIVED  
OCT 31 1995

KALI WATSON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOEIE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879  
HONOLULU, HAWAII 96801

October 30, 1995

Mr. Yukio Naito, Chairman  
Hawaii Public Utilities Commission  
465 South King Street  
Honolulu, Hawaii 96813

Dear Mr. Naito:

We are working with the U. S. Department of Agriculture, Rural Utilities Service (RUS) regarding a loan application from Sandwich Isles Communications, Inc. (Sandwich Isles), to provide funds for the development of a state-of-the-art telecommunications system on the Department of Hawaiian Home Lands (DHHL). As you know, the majority of our lands are located in rural areas and are therefore subject to high costs of installing service. Furthermore, some of our beneficiaries are currently being provided party line service. In fact our recently announced subdivision in Makuu on the Island of Hawaii will also have party line service. It appears that RUS has programs to correct many of these problems which DHHL is eligible for. However, in order for DHHL to participate in these programs we must meet certain requirements.

The Hawaiian Homes Commission has issued an exclusive license for the provision of telecommunications service to Waimana Enterprises, Inc. (Waimana). Waimana has assigned the license to its wholly-owned subsidiary Sandwich Isles. We understand that the Public Utilities Commission (PUC) recognized the Hawaiian Homes Commission's authority to grant licenses and easements for the provision of telecommunications service and that DHHL is not subject to eminent domain proceedings. We are concerned that there is a continuity of service while the transition is made from GTE Hawaiian Telephone to Sandwich Isles.

Consequently, we request that the PUC continue to regulate telephone service on DHHL until such time as the HHC is in a position to assume these responsibilities. We will have our staff work with your staff to complete the details. At that time, we request that the PUC agree to cease regulation of

Attachment "B"  
Exhibit I

telecommunication service on DHHL. We recognize that the PUC would regulate all telecommunications service outside of DHHL including those which may be provided by Sandwich Isles

Please indicate your concurrence to our proposal outlined above by signing below. If you have any questions please contact me.

Warmest Aloha,



Kali Watson, Chairman  
Hawaiian Homes Commission

Concur:

Yukio Naito, Chairman  
Public Utilities Commission